



August 13, 2012

California Energy Commission

Docket Office, MS-4

Docket No. 11-RPS-01

1516 Ninth Street

Sacramento, CA 95814

(submitted via email to: docket@energy.state.ca.us and RPS33@energy.state.ca.us)

Re: Docket No. 11-RPS-01; Renewables Portfolio Standard

Docket Office:

Please find the enclosed comments from the Union of Concerned Scientists (UCS) and the Large-scale Solar Association (LSA) regarding the second version of pre-rulemaking draft regulations for the 33 Percent Renewables Portfolio Standard (RPS) program.

Sincerely,

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UCS/LSA Comments on the Revised Publicly Owned Utility (POU) RPS Draft Regulations

UCS and LSA thank the California Energy Commission (Commission or CEC) for providing the opportunity to submit comments on the revised July 2012 “33 Percent Renewables Portfolio Standard Pre-Rulemaking Draft Regulations” (revised draft regulations). Both UCS and LSA submitted comments on the earlier version of the draft regulations. We appreciate the changes made to address our earlier concerns. The comments provided below address outstanding issues that have not yet been resolved and new concerns stemming from the changes and additions to the draft.

Section 3201 - Definitions

UCS and LSA believe that certain definitions need to be amended to clarify the terminology used in the regulations and to ensure this terminology is consistent with statutory requirements and the RPS obligations, as described in the regulations. Specifically, UCS and LSA suggest the following specific amendments and clarifications for “RPS Procurement requirement” and “Retire.”

Section 3201(y) defines “RPS procurement requirement” as “both the portfolio balance requirement and the RPS procurement target with which a [publicly-owned utility] must comply.” (emphasis added) UCS and LSA point out that this definition suggests a single requirement, encompassing both the portfolio balance requirement and the RPS procurement target. However, this is not consistent with the rest of the regulations, which generally refer to “RPS Procurement Requirements” and treat the portfolio balance requirements separately from the RPS procurement. Section 3204 (entitled RPS Procurement Requirements) first discusses the RPS procurement targets for each compliance period in subpart (a), while in subpart (c), the revised draft regulations state that “each POU shall [in addition to meeting the RPS procurement targets in subpart (a)] be subject to the following portfolio balance requirements. UCS and LSA also note that the term “RPS procurement requirement” is in some instances used when the regulations appear to be referring not to the suite of portfolio balance requirements and RPS procurement targets, but to a subset of those requirements. For example -

- Section 3204(c)(9) states that “[e]xcept as otherwise required by Section 3204(c), electricity products meeting the definition of Product Content Category 2 specified in Section 3203(b) may be used to meet an RPS procurement requirement.” While Product Content Category (PCC) 2 products can count towards the RPS procurement target (consistent with the portfolio balance requirements), PCC 2 products cannot be used to meet the portfolio balance requirements for other product categories.
- Section 3206(a)(2) states that “[a] POU may adopt rules permitting the POU to make a finding that reasonable cause exists to delay the timely compliance with **RPS procurement requirements**, as defined in Section 3204.” (emphasis added). The RPS statute provides for a waiver of compliance of the procurement targets if certain conditions are met. Public Utilities (PU) Code § 399.15(b)(5). But, the statute also separately allows for a “reduction in a procurement content requirement” if the retail seller cannot comply with requirement due to the occurrence of those certain conditions. PU Code § 399.16(e). The revised draft regulations

have separate provisions associated with this reduction. Section 3206(a)(4). It is unclear why the delay of timely compliance section (3206(a)(2)) refers to “RPS procurement requirements”; this Section should be limited to the RPS procurement target. UCS and LSA also note that the statute does not provide for increases in the portfolio content limitation associated with PCC 3 products. In addition, as the regulations recognize, to excuse noncompliance, the occurrence of one of the specified conditions must preclude the retail seller from meeting the specific obligation at issue; the occurrence of a specified condition does not automatically excuse the seller from complying with both the overall target and the PCC 1 obligation.

Thus, UCS and LSA recommend that CEC clarify in these regulations whether there is a single overall compliance requirement encompassing the portfolio content requirements and the RPS procurement target or whether the target and the portfolio content obligations are separate compliance requirements. We also request that the CEC review the use of the terms “RPS procurement requirement” and “RPS procurement requirements” in the revised draft regulations to ensure that the terms reflect the regulatory intent, are not overinclusive, and are consistent with the statute. As noted above, we have identified a couple of regulatory provisions that should be modified, but this list is not intended to be exhaustive.

Section 3201(aa) defines “Retire” as meaning “to claim a renewable energy credit in the tracking system established by the Commission pursuant to PU Code Section 399.25 (c) and thereby commit the renewable energy credit to be used for compliance with the RPS.” UCS and LSA request that this definition specify that the REC retirement date is the generation date associated with the REC that was recorded as renewable on a utility’s power source disclosure form.

Section 3203 – RPS Portfolio Content Categories

UCS and LSA support the Commission’s addition of Section 3203(b)(2)(E), which clarifies that transactions meeting the requirements of PCC 2 cannot include transactions where the electricity generated by the RPS-certified facility has been sold back to the facility. This is consistent with the rules established by the California Public Utilities Commission (CPUC) in Decision 11-12-052 and would classify transactions previously eligible under “footnote 3” of the RPS Guidebook as PCC 3 transactions.

However, Section 3203 still lacks specific information on what type of documentation is needed to verify the transactions for each portfolio content category. For example, the Commission must identify what types of information POUs must provide in order to verify the hourly generation of transactions that they intend to classify as PCC 1 under Section 3203(a)(1)(C). UCS and LSA urge the Commission to adopt verification requirements that are identical to those adopted by the CPUC for retail sellers.

Section 3204 – RPS Procurement Requirements

The revised draft regulations establish procurement targets for the three compliance periods outlined in PU Code section 399.30. Under the revised draft regulations, consistent with PU Code Section 399.30(c)(1), each POU would be required to demonstrate RPS-eligible procurement equal to an average of 20 percent of retail sales over the entire first compliance period (2011-2013).

PU Code Section 399.30(c)(2) specifies the remaining procurement obligations through 2020, which require that procurement in the second and third compliance period “reflect reasonable progress in each of the intervening years...” However, the revised draft regulations appear to contain no requirement to make reasonable progress in intervening years, aside from maintaining the procurement level required in the previous compliance year and reaching 25 percent and 33 percent renewables in the years 2016 and 2020, respectively.

When the Legislature made revisions to the RPS program to establish compliance obligations for multiple-year periods as opposed to locking utilities into specific obligations for each year, it did so to provide flexibility in recognition of the “lumpy” nature of renewable energy procurement. Creating multi-year compliance periods did not erase the Legislature’s expectation that renewable energy procurement would continue to occur in interim years. To make this clear, the Legislature added a sentence in PU Section 399.30(c)(2): “The quantities of eligible renewable energy resources to be procured for all other compliance periods reflect reasonable progress in each of the intervening years sufficient to ensure that the procurement of electricity products from eligible renewable energy resources achieves 25 percent of retail sales by December 31, 2016, and 33 percent of retail sales by December 31, 2020.” (emphasis added) By omitting any mention of the statutory “reasonable progress” requirement in the draft regulations, the Commission creates compliance uncertainty for the POUs and sends the incorrect message that actual progress on procurement in the interim years between compliance benchmarks does not matter.

UCS and LSA believe that making reasonable progress on renewable energy procurement in the years between compliance benchmarks serves several purposes. At a basic level, making progress on compliance requirements throughout the years helps ensure the POUs actually meet the obligations of the RPS, and are not forced into a flurry of procurement activity that may provide less ratepayer value (more costly, less long-term price certainty) as compliance deadlines approach. A California renewable energy market that operates in fits and starts governed by compliance deadlines could also hamper the development of new renewable energy resources by enhancing market uncertainty.

The Commission should reinstate Section 3204(d), which has been completely removed in the revised draft regulations. Furthermore, “reasonable progress” should be defined as the increases in procurement described in the previous draft of Sections 3204 (d)(2) and (3). Should a POU fail to meet the cumulative requirements of Sections 3204(d)(2) and (3), it should have the option of submitting evidence of alternative forms of “reasonable progress”, which have been suggested (not as an exclusive

list) in the previous draft of Section 3204 (d)(1). The Commission should clarify that the list of alternative forms of “reasonable progress” identified in Section 3204(d)(1) is not exhaustive.

As discussed above in comments on Section 3201, UCS and LSA request that the Commission clarify the meaning of “RPS procurement requirement.” In particular, we note that Section 3204 contains separate compliance equations for the RPS procurement target (subpart(a)), the PCC minimum for Category 1 products (subpart(c)(1-4)), and the PCC maximum for Category 3 projects (subpart(c)(5-8)). The language of these subparts is confusing. Specifically, the language in subpart (c)¹ suggests that the PCC requirements are necessary to meet the overall procurement target, while the language in subpart (a) explicitly limits the amount of Category 3 products that can count towards the overall target, but does not refer to the Category 1 requirement.

In addition, UCS and LSA recommend the following clarifications in Section 3204 -

- Equations in subpart (a) should describe how excess procurement and/or historic carry over would be counted towards the procurement target.
- Subpart (a) should consistently use the term “retired” to describe products that can count towards the procurement target, rather than “procured.”
- Subparts (c)(4) and (c)(8) should include generalized equations for years beyond 2020, as opposed to a single equation for 2021.
- Subparts (c)(4) and (c)(8) should include generalized equations for years beyond 2020, as opposed to a single equation for 2021.

Section 3205 – Procurement Plans and Enforcement Programs

The Commission’s revised draft regulations significantly reduce the minimum contents of a POU’s RPS procurement plan, and only require the POU to submit one plan by January 1, 2013. Procurement plans, unlike annual compliance reports which provide information on past actions, offer the Commission and POU ratepayers with a glimpse of how a utility plans to approach future compliance requirements. Procurement plans also provide the Commission with a roadmap of a POU’s RPS compliance strategy, which can help inform the Commission’s analysis of whether it should recommend enforcement action if a POU has failed to meet its RPS obligations.

At minimum, the Commission should require the POU to submit a procurement plan prior to each compliance period. In addition, the Commission should post these plans, with any revisions that occur throughout the years, in a centralized location on the Commission’s website.

¹ Subpart (c) states that “[i]n meeting the RPS procurement targets as defined in Section 3204 (a), each POU shall also be subject to the following portfolio balance requirements...”

Section 3206 – Optional Compliance Measures

The revised draft regulations include a new section allowing historic carry-over of procurement generated before January 1, 2011 that met the Commission's RPS eligibility requirements that were in effect at the time of execution of the original procurement contract or ownership agreement. UCS and LSA are concerned that the revised draft regulations do not provide sufficient guidance about the generation that would be eligible for historic carry-over, how historic carry-over should be computed, and the reporting requirements to ensure transparency around historic carry-over and consistency with the regulations.

UCS and LSA are concerned that the revised draft regulations do not explicitly limit the sale or transfer of historic carry over from the original procurer of the generation to another utility. UCS and LSA request that Commission clarify that historic carry-over generation may only be claimed by the entity for whom it was originally generated and cannot be sold or transferred to another utility for its own RPS obligation. Any sales or trades of historic carry-over would be inconsistent with the new statutory scheme, which requires procurement meet PCC requirements. Specifically, since the historic carry-over is not classified in PCCs, any buyer of historic carry over should not be eligible to use it in towards RPS compliance obligations in the new framework.

Section 3206(a)(5)(B) requires that historic carry-over generation must be from facilities that were RPS-eligible at the time of procurement, but does not require generation to have been tracked in the Western Renewable Energy Generation Information System (WREGIS). For historic carry-over generation that was not tracked in WREGIS, UCS and LSA request that the Commission clarify how this generation will be verified and how the Commission will ensure this generation was not otherwise claimed for voluntary renewable energy programs, to avoid the possibility of double-counting. UCS and LSA suggest that amending the definition of "retire", as suggested early in these comments, could resolve this issue by limiting the historic carry over to generation reported on the Power Source Disclosure forms. In addition, UCS and LSA request information on how compliance with Section 3206(a)(5)(E) (requiring retirement within 36 months of generation) will be tracked for renewable energy credits that are not in WREGIS.

Section 3206(a)(5)(C) describes how historic carry-over is calculated - by subtracting procurement generated that was applied to a POU's RPS compliance obligation or sold, retired, or otherwise claimed for compliance or another voluntary claim. UCS and LSA request additional information on what documentation the POUs must provide to demonstrate that procurement is eligible to ensure that the procurement is not double-counted. This section should explicitly state that the procurement must be eligible and/or refer to the description of which procurement is eligible. UCS and LSA recommend that the regulations provide an equation for calculating historic carry-over. From the regulatory language, it appears that this would be an annual calculation and summed up over the years 2004-2010. UCS and LSA also request that the regulatory language be amended to clarify that historic carry-over is an aggregate amount which accounts for both excess quantities and deficits compared to the baseline (i.e., deficits are included in the calculation and would offset the excesses).

UCS and LSA note that the equation in Section 3206(a)(5)(D)(1) is difficult to read due to the image quality. Specifically, the equation appears to only include addition and multiplication signs, but we understand that the equation should read as follows:

$$\text{Baseline} = (\text{EP}_{2001}/\text{RS}_{2001}) \times \text{RS}_{2003} + (0.01 \times \text{RS}_{2003})$$

UCS and LSA request that the final regulations include a general equation for the annual procurement targets for the years from 2004 to 2009.

Section 3207 – Compliance Reporting


PU Code Section 399.30(g) requires the POUs to annually submit documentation regarding RPS-eligible procurement executed during the prior year. UCS and LSA appreciate the additional language in Section 3207(G) that requires POUs to describe perceived challenges to future RPS compliance, but submit that this language is not meaningful unless the POUs are also required to describe actions they plan to take to minimize the delay of timely compliance. Requiring the POUs to submit information on what they plan to do to address perceived compliance challenges creates an expectation that simply pointing out challenges to the program is insufficient, and that utilities are expected to take reasonable measures under their control to minimize procurement delays and non-compliance. In addition, providing annual information on procurement challenges and planned mitigation measures provides a record of actions that the Commission can rely upon when deliberating on whether enforcement actions are justified. Finally, a record of perceived challenges and mitigation efforts informs policymakers of challenges shared by multiple utilities, which can help inform revisions to future RPS program requirements.

In addition, the Commission should ensure that excess procurement recorded in annual compliance reports is verified as meeting the requirements of PU Code 399.13 and contains a description of the resource, contract length, and RPS portfolio content classification.

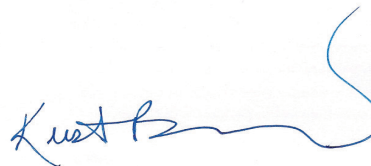
Finally, the Commission should ensure that these plans are made available to the public, on a centralized location on the Commission's website.

UCS and LSA thank the Commission for the opportunity to provide these comments.

Sincerely,



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